

APPEAL NO. 92100
APRIL 27, 1992

On January 29, 1992, a contested case hearing was held in (city), Texas, (hearing officer) presiding as hearing officer. He determined that neither the appellant nor the respondent/cross-appellant were eligible beneficiaries (widows) of the deceased and that three issue of the marriage with the respondent/cross-appellant were the eligible beneficiaries. Appellant urges that the decision be reversed and that she be found to be the eligible widow beneficiary. Respondent asks that we affirm that portion of the decision that determines the appellant is not the widow beneficiary and further asks that we reverse that portion of the decision that holds she is not the widow beneficiary. Both parties urge error in some of the hearing officer's findings of fact.

DECISION

Finding the evidence sufficient to support the findings, conclusions and decision of the hearing officer, we affirm.

The only issue before the hearing officer in this case was who, if anyone, is entitled to widow benefits under the provision of the Texas Worker's Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq.* (Vernon Supp 1992) (1989 Act). The hearing officer stated and all the parties agreed that the determination would also be made whether or not the deceased had any children eligible to receive benefits under the 1989 Act.

The deceased left a tangled web with regard to his legal beneficiaries. The evidence presented by EPT, respondent/cross-appellant, consisted of her own testimony, that of her sister, the testimony of the deceased's sister and several documents tending to show her relationship with the deceased. EPT testified that she and the deceased exchanged wedding vows (not officiated by anyone empowered or authorized to perform a ceremonial wedding) in the home of the deceased's mother on January 13, 1973 and that the deceased bought wedding rings which both of them wore. Three children were subsequently born to EPT and the deceased between 1974 and 1977. She testified that the deceased made house payments until 1986 or 1987 and gave them a little money until a month or two before his death. She testified that all during the course of their lives they had occasionally been intimate, the latest time being in January 1991, on her birthday. EPT testified that she lived with her mother, sister, three children, and a single man. She was aware of the ceremonial wedding between the deceased and SR. She stated that she and the deceased "were not generally in the same house" after 1986 the year the deceased married SR. She also testified that she had filed for child support and had inquired about filing for divorce after the deceased married SR.

The deceased's sister testified that the deceased referred to EPT as his wife and told other people that she was his wife during the 1970s. She considered EPT to be her sister-in-law although she had been a bridesmaid in the wedding of the deceased and SR.

SR's sister testified that the deceased had referred to EPT as his wife in the past and that he still visited EPT and the children who he referred to as his. She stated one of the children had lived with the deceased during the last year of his life.

EPT introduced an excerpt from probate proceedings consisting of testimony of CSB, a close friend of the deceased, who stated that the deceased had introduced EPT as his wife within the past eight years. He further stated that the deceased was living with a BD at the time of his death and that they had lived together for about two years. He stated the deceased introduced him to SR and that she and the deceased were married sometime after that.

Documents introduced by EPT included a birthday card, an order appointing EPT as temporary administrator of the deceased's estate, birth certificates of the three children showing the deceased as their father, a death certificate showing EPT as surviving spouse and several health records indicating the deceased as a parent of the children.

The appellant (SR) testified that she met the deceased in May 1983 and began dating him in October. They lived together for approximately two and one-half years and ultimately married in March 1987. SR was aware the deceased had been married (a ceremonial marriage) and divorced from another woman in the early 1980s but denied any knowledge of an informal marriage to EPT despite the fact that she knew of his children with EPT. She stated that approximately 550 people attended her wedding to the deceased and that she and the deceased lived together until he moved out in September 1990 around Labor Day. There was no evidence that any children were born of their marriage. SR started dating another man in January 1991.

Documents introduced by SR included her marriage license and officer's return indicating her marriage to the deceased on March 14, 1987, the deceased's divorce paper from his first ceremonial marriage, and a cashed check from 1986 showing both the deceased's name and SR's.

The hearing officer made a finding of fact that the deceased was known as both LT and LTR. The appellant, SR, takes issue with two (numbers 7 and 8) of the hearing officer's conclusions of law. The respondent/cross-appellant, EPT, urges that the conclusions of law contested by appellant be affirmed but that the hearing officer's Findings of Fact Nos. 7 and 10 and Conclusion of Law No. 6 be reversed. Both parties disagree with the final decision of the hearing officer. The disputed findings, conclusions and decision are:

FINDINGS OF FACT

7.The deceased and [EPT] were never divorced and neither sought any judicial or administrative determination of the validity of their relationship prior to this benefit contested case hearing: they ceased living together as

husband and wife on some unknown date occurring before August 7, 1987.

10.[SR] believed that she and the deceased had established a valid marriage according to Texas statutes.

CONCLUSIONS OF LAW

6.The marriage of the deceased and [EPT] was dissolved by operation of law on September 1, 1991.

7.The putative marriage of the deceased and [SR] did not ripen into a valid marriage per verba de praesenti cognizable under Texas law; [SR] was never married to the deceased.

8.[SR] is not a lawful beneficiary of the deceased and is not entitled to workers' compensation benefits.

DECISION

[Employer] is liable for the payment of death benefits to the legal beneficiaries of [deceased] pursuant to the Texas Workers' Compensation Act of 1989 and the rules promulgated thereunder. LRT, DLT and ND T are the eligible beneficiaries as defined by Art. 8308-4.42(g)(2) V.T.C.S.

The first matter we address is the status of the relationship between the deceased and EPT. The hearing officer found a factual basis to conclude that a valid informal or common law marriage was entered into and established between the deceased and EPT on January 13, 1973. There is sufficient evidence to support his finding and conclusion. Estate of Claveria v. Claveria, 615 S.W.2d 164 (Tex. 1981). However, the hearing officer concluded that this marriage was dissolved by operation of law on September 1, 1990. This conclusion followed his finding that they had "never divorced and neither sought any judicial or administrative determination of the validity of their relationship prior to this benefit contested case hearing: they ceased living together as husband and wife on some unknown date occurring before August 7, 1987."

Section 1.91 of the Family Code was amended in 1989 (V.T.C.A., Family Code Sec.1.91 (Pocket Part 1992)) and provides in pertinent part:

Sec 1.91.Proof of Certain Informal Marriages

(a)In any judicial, administrative, or other proceedings, the marriage of a man and woman may be proved by evidence that:

(1)a declaration of their marriage has been executed under Section 1.92 of this code;
or

(2)they agreed to be married, and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.

(b)A proceeding in which a marriage is to be proved under this section, must be commenced not later than one year after the date on which the relationship ended or not later than one year after September 1, 1989, whichever is later.

There is sufficient probative evidence that the deceased and EPT ended their cohabital relationship at least sometime before August 7, 1987, and that no judicial, administrative, or other proceedings were instituted within the statutory time limit set forth above. Aside from the lack of any evidence that the deceased ever resumed living with EPT after his first ceremonial marriage, there is evidence to indicate that although he continued to see EPT and his three children and that he may have intermittently had intimate relations with EPT, he went on to yet another ceremonial marriage, this time with SR. That these ceremonial marriages apparently had impediments to them because of the earlier informal or common law marriage to EPT does not diminish the inference from the evidence that the cohabital relationship between the deceased and EPT had ceased.

EPT urges that the relationship set out in the statute is a marriage relationship and that such relationship can only be ended constitutionally by "all the incidences of due process or by death." Although we discern little authority or merit for the constitutionality position set out in EPT's Response/Request for review, as we have previously stated, judicial bodies are the more appropriate forum where constitutional issues are involved in agency disputes. Texas Workers' Compensation Commission Appeal No. 91080, decided December 20, 1991. With regard to the reference to "the relationship ended" in the statute, it would not appear to give any significant meaning or effect to the whole section to interpret that to mean "marital relationship." In his commentary on these provisions of Title I of the Family Code, Professor Joseph W. McKnight states "[the] relationship" referred to in subsection (b) must mean 'cohabital relationship' rather than 'marital relationship.'" 21 Tex. Tech L. Rev. 911 at pg. 942 (1989-1990). Inasmuch as the evidence supports the finding and conclusion that the cohabital relationship ceased between the deceased and EPT sometime before August 7, 1987 and that no proceeding was brought as set forth in subsection (b), the marriage was dissolved by operation of law on September 1, 1990. Accordingly, EPT would not qualify for benefits under the Workers' Compensation Act.

Under the provisions of Section 2.22 of the Family Code, a marriage is void if either party was previously married and the prior marriage is not dissolved. That section goes on to provide that "[h]owever, the marriage becomes valid when the prior marriage is dissolved if since that time the parties have lived together as husband and wife and represented

themselves to others as being married." Under the circumstances present in this case, it appears clear that the ceremonial marriage between the deceased and the appellant, SR, was void from the time it was entered into on March 14, 1987, until the impediment of the prior informal marriage to EPT was removed. As stated above, under the circumstances of this case, the informal marriage between the deceased and EPT ended by operation of law on September 1, 1990. Once the previous marriage ended did the subsequent marriage between the deceased and SR become valid? The hearing officer determined that it did not and, in our opinion, there is probative evidence to support this determination. In Durr v. Newman, 537 S.W.2d 323, (Tex.Civ.App.-El Paso 1976, writ ref'd n.r.e.), the court indicated, in holding a subsequent informal marriage valid, that even though, *inter alia*, the parties stayed together for only three days after the man's prior marriage was dissolved by divorce and even though no agreement to become husband and wife was ever made after the date of such divorce, the evidence was sufficient to support trial court's finding that the man and woman had lived together as husband and wife and represented themselves to others as being married, in view of evidence that the woman considered herself as the man's wife, that the parties had lived together before dissolution of decedent's prior marriage and that the woman had taken care of decedent's son. In Durr, the reason the parties had lived together for only three days following the dissolution of the prior marriage was because the deceased was killed in an airplane crash at that time. Caddel v. Caddel, 486 S.W.2d 141 (Tex.Civ.App.-Amarillo 1972, no writ) holds that Section 2.22, which provides for the validation of a subsequent marriage when a prior marriage is dissolved, applies prospectively from dissolution of the prior marriage; validation of the subsequent marriage does not relate back to date when it was contracted, and that such subsequent marriage is common law in character. In the case *sub judice*, while there is testimony from SR that the deceased lived in the same house with her for a couple of days following September 1, 1990, there is also evidence that the deceased had been living with another woman for up to two years prior to his death. SR also testified that the deceased had a relationship with this other woman starting in about August 1989. None of the other factors normally associated with informal or common law marriages were present nor were any documents offered to show a marriage occurring during these couple of days in September 1990. Estate of Claveria, *supra*. In sum, the state of the evidence was such as to sufficiently support the determination of the hearing officer. In his fact finding capacity, he is the one who resolves any conflicts in the evidence. See Texas Workers' Compensation Commission Appeal No. 92069, decided April 1, 1991, and cases cited therein.

Under the evidence a question of whether a putative marriage may have existed between the deceased and SR was raised. The hearing officer, in his findings of fact, determined that SR believed she and the deceased had established a valid marriage according to Texas statutes, but concluded that this "putative" marriage did not ripen into a valid informal marriage under Texas law and that she was never married to the deceased.

A putative marriage is one which was entered into in good faith by at least one of the parties, but which is invalid by reason of an existing impediment on the part of one or both of the parties. Garduno v. Garduno, 760 S.W.2d 735 (Tex App.-Corpus Christi 1988, no

writ). A putative marriage may arise out of either a ceremonial or informal marriage. Rey v. Rey, 487 S.W.2d 245 (Tex. Civ. App. no writ). While a putative marriage is based upon good faith and ignorance of the impediment (Esparza v. Esparza, 382 S.W.2d 162 (Tex. Civ. App.-Corpus Christi 1964 no writ)), if the alleged putative spouse is aware that a prior marriage existed at one time or if party to an alleged putative marriage receives reliable knowledge of an impediment to the marriage, that party cannot simply declare disbelief of information and continue as if it were untrue but, rather, has a duty to investigate further and not act blindly or without reasonable precaution. Garduno, *supra*. Here, there was testimony by EPT that SR knew that she (EPT) and the deceased were married and that she (EPT) received a call from SR who asked her directly if she (EPT) was married to the deceased and that she (EPT) replied "yes." The evidence also indicated that SR was well aware of the children born to the deceased and EPT, although SR testified that the deceased denied he was married to the mother of the children. SR also indicated she knew the deceased went to EPT's residence frequently. Under the circumstances, armed with knowledge or with information that gives rise to a duty to investigate further, SR was no longer acting in good faith. At this point, any putative marriage that may have arisen came to an end. Garduno, *supra*, at pg. 740.

We find the evidence sufficient to support the conclusion that neither a putative nor informal marriage ripened into a valid marriage between the deceased and SR following the dissolution of the informal marriage between the deceased and EPT on September 1, 1990. Accordingly, the decision of the hearing officer that the children of the deceased and EPT are the only legal beneficiaries and the ones entitled to benefits under the 1989 Act, is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge

